

2001

# Eagar, Inc. and L. Stanley Bell v. James Leroy Eagar : Brief of Appellant

Utah Court of Appeals

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## Recommended Citation

Brief of Appellant, *Bell v. Eagar*, No. 20010584 (Utah Court of Appeals, 2001).  
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**IN THE UTAH COURT OF APPEALS**

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EAGAR, INC. and L. STANLEY BELL

Plaintiffs, Counterclaim  
Defendants and Appellants,

v.

JAMES LEROY EAGAR,

Defendant, Counterclaimant and  
Appellee.

---

Court of Appeals No. 20010584-CA

Argument Priority No. 15

---

**REPLY BRIEF OF APPELLANTS EAGAR, INC. AND L. STANLEY BELL**

---

ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT  
OF DAVIS COUNTY, STATE OF UTAH  
HONORABLE RODNEY F. PAGE

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**FILED**  
Utah Court of Appeal

FEB 13 2002

ORAL ARGUMENT REQUESTED

**Pauletta Stagg**  
Clerk of the Court

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## ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN REDUCING THE ATTORNEYS' FEES REQUESTED BY APPELLANT.

A. BELL PRODUCED ADEQUATE CREDIBLE EVIDENCE TO SUSTAIN AN AWARD OF ATTORNEYS' FEES.

Appellee argues that the evidence submitted was inadequate to sustain an award of attorneys' fees. The Appellee argument is inconsistent with the Trial Courts order, which determined the evidence submitted was adequate to sustain an award. The Court failed to engage in the analysis required by *Dixie State Bank v. Bracken*, 746 P.2 985 (Utah 1988). The Trial Court failed to determine the amount charged by Plaintiff's counsel was unreasonable or that the time expended by Plaintiff's counsel was excessive. The trial without reference to any particulars of Plaintiff's billing determined that the case was "simple" and, therefore, could not justify more than was awarded by the Trial Court in its arbitrary judgment.

The Courts failure to engage in the required analysis was error as a matter of law. See: *Dixie Id.* If the Trial Court had engaged in the required analysis it would have determined that the "simple case" became complex and time consuming as a direct result of the conduct of Defendant and his serial attorneys. The Defendant went through at least two sets of lawyers before finally settling on one who could argue this "simple case" before a Trial Court, to the court of Appeals and back again.

The case included a mediation where an independent mediator told the Defendant to settle for virtually exactly where the case was resolved. The Plaintiff engaged in extensive pre-litigation efforts to avoid litigation and its attendant costs, which were uniformly rebuffed by the Defendant and his counsel or resulted in the termination of counsels services.

Appellees attempt to question the length of the affidavits provided in support of attorney's fees highlights the problems created by Defendant and its counsel from the inception of the case. The affidavits which incorporated the services rendered by Plaintiff's counsel provided all of the information required to permit the Court to engage in a proper *Dixie State Bank* analysis.

The Defendant asked the Court to compel Plaintiff's counsel to provide further document but the Trial Court refused apparently based upon the representations of Plaintiff's counsel and the reality that the statements reflected the time expended.

While Appellants affidavits may have been short, complete bills were submitted to the Court reflecting the time and services provided. The only information not provided were handwritten billing notes that were destroyed when the bills were prepared.

B. BELL WAS NOT REQUIRED TO ALLOCATE THE REQUESTED FEES.

Appellee relies upon *Valcarce v. Fitzgerald*, 961 P.2d 305, 318 (Utah 1998), which states:

“[A] Trial Court's award of attorney's fees must distinguish between those fees incurred in connection with successful and unsuccessful claims, as the

evidence submitted by the prevailing party, or the reviewing Court will be precluded from making an independent determination.”

In this matter, there was only one claim, and that claim was that Appellee was required to provide Appellants with a lease containing certain agreed upon terms. The claim was made against only one party: the Appellee. That lease was not tendered by Appellee until the Court order in this case. There were no other claims. There were no other parties. There is no need for allocation under this case.

Appellee further relies upon *Footte v. Clarke*, 962 P.2d 52 (Utah 1998). In the *Footte* case there were tort-based claims for which “[i]t would violate the contract to require the defaulting party to pay attorney fees accrued in pursuing these claims when the work done did not tangibly relate to the breach of contract claim.” In this case, once again, the only claim was for breach of the contract. Once again, there is no requirement for allocation.

Appellee’s reliance upon the case of *Dejavue, Inc. v. U.S. Energy Corp.*, 1999 Ut App 355, 993 P.2d 222 is misplaced. *Dejavue* is a significant case, since it unequivocally supports the position of Appellant in holding:

“Furthermore, when a Plaintiff brings multiple claims involving a common core of facts and related legal theories, and prevails on at least some of its claims, it is entitled to compensation for all attorney fees reasonably incurred in the litigation.”

Because in the matter before the Court the Appellant prevailed on all of the issues, and since there is only one Defendant, Appellant is entitled to compensation for its attorneys’ fees on all related legal theories growing out of the common facts. This would include those fees incurred through the three generation of attorneys previous to Appellees present counsel



with whom Appellants attempted to negotiate a settlement, and then to mediate a settlement.

See: *R. 615-616*.

**C. APPELLANT IS ENTITLED TO ITS ATTORNEY’S FEES.**

Appellee argues that the issues in this case were simple and that Appellants fees should not have been as high as they were. Appellants have agreed that the issues were simple throughout the course of this matter. The actions undertaken by Appellants were compelled in every case by the actions of Appellee in attempting to delay this matter and circumvent the clear language of the agreement. The Supreme Court determined in *Dixie State Bank v. Bracken*, 746 P.2d 985 (Utah 1988), “[M]ore importantly the fees incurred by the bank were increased several-fold over what they should have been by tactics employed by the Brackens.” It is inappropriate to penalize the Appellant for the actions of Appellee.

In the final analysis, the Trial Court must follow the standard set in *Dixie State Bank*:

“Although all of the above factors may be explicitly considered in determining a reasonable fee, as a practical matter the Trial Court should find the answers to four questions:

1. What legal work was actually performed?
2. How much of the work performed was reasonably necessary to adequately prosecute the matter?
3. Is the attorney’s billing rate consistent with the rates customarily charged in the locality for similar services?
4. Are there circumstances which require consideration of additional factors, including those listed in the Code of Professional Responsibility?”

If the Trial Court had made the required analysis of the Plaintiff's statements, and then concluded the \$10,500.00 was the reasonable fee under the circumstances, then Plaintiff may disagree but would have no legal basis for this Appeal. If this analysis had been performed a different conclusion would have been reached. Interestingly, the Appellees attempt to make the required analysis in its brief acknowledges the Court's failure.

While the Appellant is appreciative of Appellees instincts to fill in the holes and complete the required *Dixie* analysis, Appellant would just as soon have the Court complete the analysis as opposed to the disingenuous, half hearted, if not spurious effort of Appellee. Before the Trial Court, Appellants would have been happy to review their bills on a line-by-line basis to establish their points and position. The Trial Court, however, declined to allow this sort of analysis. It simply established the amount of attorney's fees in an arbitrary and capricious manner.

**D. APPELLANTS ARE NOT ENTITLED TO ATTORNEYS FEES ON APPEAL.**


The presumptuous attempt of Appellee to forecast the decision of this Court is just another example of the Appellees continued arrogant and misguided attempts by the last of three generations of counsel to avoid reality. No attorney's fees should be granted to Appellee.

## CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court set aside the decision of the Trial Court and order attorneys fees as requested by Appellants.

Dated this 12<sup>th</sup> day of February, 2002.

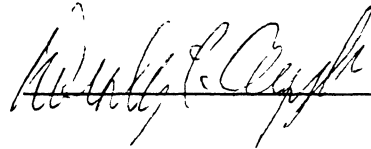
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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of February, 2002, I caused two true and correct copies of the foregoing Brief of Appellants to be mailed, postage prepaid, to the following:

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